

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 TIRSO MARTINEZ-SANCHEZ,

7 Defendant.

04-CR-874 (BMC)

United States Courthouse
Brooklyn, New York

February 20, 2020
10:30 a.m.

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9 TRANSCRIPT OF CRIMINAL CAUSE FOR SENTENCING
10 BEFORE THE HONORABLE BRIAN M. COGAN
11 UNITED STATES DISTRICT JUDGE

12 APPEARANCES

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GEORGETTE K. BETTS, RPR, FCRR, CCR
Official Court Reporter

1 THE COURTROOM DEPUTY: All rise.

2 THE COURT: Good morning. Have a seat please.

3 THE COURTROOM DEPUTY: Criminal cause for
4 sentencing. U.S.A. V. Martinez-Sanchez. Docket number
5 04-CR-874.

6 Counsel, please state your appearances starting with
7 the government.

8 MR. ROBOTTI: Good morning, Your Honor. Michael
9 Robotti for the United States. With me is Shayna Bryant from
10 the U.S. Probation Department.

11 THE PROBATION OFFICER: Good morning.

12 THE COURT: Good morning.

13 MR. QUIJANO: Good morning, Judge Cogan for Tino
14 Martinez, Peter E. Quijano, Nancy Ennis. Also seated at
15 counsel table is Jose Antonio de Alba, Mr. Martinez's Mexican
16 attorney. Mr. Martinez is present and we're ready to proceed.

17 THE COURT: All right. Good morning, all. Good
18 morning, Mr. Martinez.

19 What are we doing about an interpreter?

20 THE COURTROOM DEPUTY: We have an interpreter
21 previously sworn.

22 THE COURT: We have a Spanish interpreter previously
23 sworn. I'll note that Mr. Martinez is wearing headphones as
24 is his counsel so they can follow the proceedings. Okay.

25 MR. QUIJANO: If Your Honor, please, I also

1 neglected to mention one other thing, the Court should be
2 aware also present for Mr. Martinez's sentencing are his wife,
3 a brother, two sisters, a son, a niece and two close family
4 friends.

5 THE COURT: Okay. Their presence is noted and
6 appreciated.

7 Let me first determine if I'm going to accept the
8 guilty plea. I don't think it's been previously accepted that
9 was given to Magistrate Judge Pohorelsky back in 2016; is that
10 right?

11 MR. ROBOTTI: I think that's accurate, Your Honor.

12 THE COURT: All right. I have reviewed the
13 transcript of those proceedings. Let me ask Mr. Martinez, is
14 it still your desire, sir, to plead guilty?

15 THE DEFENDANT: Yes.

16 THE COURT: Is everything that you told the
17 magistrate judge back in 2016 true?

18 THE DEFENDANT: Yes.

19 THE COURT: Mr. Quijano, do you know of any reason
20 why I should not accept the guilty plea?

21 MR. QUIJANO: No, Your Honor.

22 THE COURT: Having reviewed the transcript and heard
23 counsel and the defendant's answers to my questions, I find
24 that the defendant is acting voluntarily, that he understands
25 his rights and the consequences of his plea and that there is

1 a factual basis for the plea. I, therefore, accept the plea
2 of guilty as stated to the magistrate judge in 2016.

3 Let me now review with Mr. Martinez and the parties
4 the documents that I have reviewed in preparing for the
5 sentencing. If any of these documents are not familiar to
6 you, Mr. Martinez, just let me know and we'll take a break so
7 that you can review them with your attorneys.

8 We start out with the Presentence Investigation
9 Report of February 4th, 2020. There is an addendum to that
10 report that's dated February 13th, 2020. I then have a
11 sentencing memorandum from Mr. Quijano dated February 13th,
12 2020, and I have a sentencing memorandum from the government
13 with the transcript of the Guzman trial annexed and that is
14 dated February 13th, 2020.

15 Now, in addition to those things, I was given by
16 probation a confidential memorandum that, for the most part, I
17 think for the entire part, simply gives some pedigree
18 information about the defendant that's not included in the
19 Presentence Investigation Report. I want to make sure that
20 the government and defense counsel have had a chance to see
21 that confidential memorandum.

22 MR. QUIJANO: We have, Your Honor.

23 MR. ROBOTTI: Yes, Your Honor.

24 THE COURT: But I don't want you keeping copies. So
25 if you've got copies, can you give them back to my deputy

1 please.

2 MR. QUIJANO: Of course.

3 THE COURT: Let's next turn to the sentencing
4 guidelines, which of course are merely advisory and just one
5 factor that I'm going to consider in determining the
6 appropriate sentence. I don't think there's any dispute that
7 we're talking about an offense level of 43, a Criminal History
8 Category of I, and that gives us a guideline range of
9 recommending life in prison. Is that correct?

10 MR. ROBOTTI: Your Honor, just I think a
11 mathematical correction on the addendum to the PSR.

12 THE COURT: Okay.

13 MR. ROBOTTI: So when you total up the base offense
14 level in paragraph 10 and the specific offense characteristics
15 in paragraphs 11 through 15 --

16 THE COURT: Right.

17 MR. ROBOTTI: -- and then add the adjustment for the
18 role in the offense, the adjusted offense level in
19 paragraph 19 should in fact be 49 instead of 46, and then
20 minus three points for acceptance of responsibility would
21 yield a total offense level of 46. It doesn't affect the
22 guidelines range which is life, but we just wanted to note
23 those corrections for the record.

24 THE COURT: That was just a counting error?

25 MR. ROBOTTI: Just a counting error.

1 THE COURT: Mr. Quijano, you agree?

2 MR. QUIJANO: We agree, Your Honor.

3 THE COURT: It doesn't change the guideline range of
4 life obviously, it only raises the point level higher but I'll
5 make that correction to the addendum. That's my finding on
6 the guidelines.

7 Let me then hear from the parties as to the
8 application of all of the sentencing factors. I will start
9 with you, Mr. Quijano, and I have to tell you, I don't think I
10 can get where you want me to go. I know you're looking for a
11 time served sentence, you've advocated for it very effectively
12 but there's so much drugs here that, you know, even if -- if
13 there were not the 5K1 information then I think there's no way
14 we wouldn't be looking at life imprisonment. And when I start
15 there not -- forgetting about the guidelines just that's where
16 we would be because that would be an appropriate sentence
17 without cooperation, I can't get all the way down from life to
18 what you've asked for time served, which is essentially, I
19 think it's five or six years, and I'll find out from probation
20 if he's going to get credit for the time he spent in custody
21 prior to extradition, which I think he should, and if he's not
22 going to get it from the BOP, he'll get it from me. But I'm
23 still -- I'm having a very hard time with this conduct and his
24 position in the organization getting all the way down to time
25 served, so take your best shot, I'm certainly open to being

1 persuaded.

2 MR. QUIJANO: Of course, Your Honor. Your Honor,
3 certainly I would agree with the Court that there is, quote,
4 so much drugs, but I would first submit, Your Honor, there's
5 also extraordinary mitigation as well as other compelling
6 factors that do warrant the sentence we're requesting.

7 Let me start with the cooperation aspect.
8 Mr. Martinez's cooperation, by any measure, is truly
9 extraordinary and extensive. Indeed, when measured against
10 the factors, the five factors outlined in the 5K1.1, the only
11 inescapable conclusion, Your Honor, I insist is a sentence of
12 time served.

13 Starting with timeliness. While he was detained
14 awaiting extradition for two years in Mexico is when I first
15 met Mr. Martinez. After our first meeting, he asked that I
16 contact the government here in Brooklyn, advise them that not
17 only was he willing to plead guilty but was willing to provide
18 total and complete cooperation. Asked me at that early stage
19 to provide the government with essentially an outline, if you
20 will, of the vast amount of information he knew about various
21 cartels and their leaders and of course his own conduct, which
22 we did.

23 He provided information at that point, as it
24 continued for the next four years, of the Sineloa cartel's
25 trafficking and in particular the cartel's leaders, Guzman

1 Loera, Ismael Zambada, El Mayo, as well as the Juarez cartel
2 and its leaders, Armando Carrillo and his brother Vincente
3 Carrillo. Within weeks of his arrival in December of 2015
4 here in Brooklyn, he began to meet with the government. The
5 nature and extent of his actual assistance is simply
6 remarkable. His role in the cartel's operation, as the Court
7 is fully aware from hearing his testimony and reading the
8 various submissions, was essentially that of a director of
9 transportation, if you will. I will characterize it like
10 that.

11 He was in charge of developing and overseeing this
12 vast network of railroads used to move the cocaine from Mexico
13 and throughout the United States. He designed the cars that
14 were used to ship them, the routes. He found the warehouses
15 in various locations in the United States, here in New York
16 and the New York area, Chicago, Los Angeles and various other
17 parts. It all flowed because of him and he's completely
18 acknowledged that. From that position of course he was
19 witness to so much of how this cartel worked and operated.

20 After meeting with the government for over three
21 years, he was critical obviously in the Guzman Loera's jury
22 trial, which of course resulted in a conviction. Of course
23 Your Honor heard all of that firsthand.

24 In addition to his use in that prosecution and
25 conviction, he had this incredible encyclopedia of knowledge

1 which was used in preparing affidavits in support of the
2 government's extradition for Guzman. This information was
3 also used in securing an indictment of Vincente Carrillo, the
4 leader of the Juarez cartel for a continuing criminal
5 enterprise. He signed affidavits used in the extradition of
6 these two people and that is very significant, not just for
7 its value in terms of cooperation but significant in terms of
8 what this man did.

9 In addition, two months ago, in December of 2019,
10 the government relied on Mr. Martinez's information regarding
11 another individual who was detained in Mexico, a former
12 government official and is obviously contributing to that
13 investigation and that prosecution. He's already assured the
14 government that after his sentencing he will remain available
15 and ready to continue his cooperation and if need be, testify
16 in the prosecution of that individual.

17 The next two 5K factors are truthfulness,
18 completeness, reliability of the information provided by
19 Mr. Martinez and the danger or risk of injury. Of course,
20 there are very few circumstances I would submit that better
21 support a conclusion that the information was complete,
22 reliable and completely truthful and to be used by the
23 government, by the United States at a trial before a court,
24 before this Court, as well as using this information for the
25 purposes of extraditing other individuals, especially

1 individuals of the level of Guzman Loera and Carrillo Fuentes.
2 These affidavits were served on the Mexican government and I
3 need to touch on the significance of that. They are submitted
4 anonymously. Martinez's signature was nowhere to be found.
5 However, under Mexican procedure, these affidavits were
6 routinely provided to the attorneys and the defendants, the
7 would-be defendants incarcerated in Mexico. Within a very
8 short period of time, I know that those affidavits were then
9 circulated throughout various cartels. There was no doubt by
10 anyone in Mexico who read those affidavits as to who the
11 author of that information was. No doubt whatsoever. No one
12 would have this kind of detail other than Mr. Martinez. It is
13 beyond understatement that Mr. Martinez's cooperation put his
14 safety and life as well as the safety of his entire family at
15 risk. Various measures were taken before those affidavits
16 were signed, measures that still continue to this day to
17 protect them. I know this Court does not need me to describe
18 or stress the danger of this kind of information in the hands
19 of some people in Mexico. This Court heard testimony of
20 murders and violence against not just possible cooperators,
21 entire families, children, innocents. Mr. Martinez did this
22 and the entire cooperation fully aware of that. His family
23 has had to undergo major changes because of that. That's the
24 significance and measure of this cooperation.

25 The final factor is the usefulness and significance

1 of Tirso Martinez's assistance. I can do no better than
2 perhaps paraphrase some of the government's submission. Tirso
3 Martinez's cooperation has been extremely meaningful. Indeed,
4 it was essential to the government's ability to prosecute some
5 of the most powerful drug trafficking leaders in the world.
6 The beneficial impact of his candid, complete and crucial
7 cooperation on the larger community not only New York but well
8 beyond is of historic value. Clearly, his unswerving efforts
9 to assist law enforcement authorities in dismantling the
10 Sineloa and Juarez drug cartels should entitle him to
11 significant sentencing reduction.

12 Now, let me address specifically the Court's
13 hesitation at this point to believe that when weighed against
14 all this incredible drugs and yes, his position and role in
15 the cartel, at the end of that balancing, time served is not
16 warranted. Let me address it in this way, if I may.

17 Your Honor, usually when I stand before a district
18 court in a sentencing hearing I spend a great deal of my time
19 trying to convince the Court that the person they are
20 sentencing today is not the person who committed these crimes,
21 that there's been a transformation, admittedly helped perhaps
22 by incarceration. He's found God. He's found the tremendous
23 error in his ways due to drugs and criminal activity for
24 himself, for society, for his family, all of that. He has a
25 new sense of commitment to the world, to himself, to his

1 family. He's found God often and talks of his new faith and I
2 try and tell the Court don't be afraid of the sentence I'm
3 asking. Don't be afraid because you're not sentencing the
4 same man or the same person who committed these crimes, and in
5 no way do I minimize the extent of his criminal activity nor
6 does Mr. Martinez, however, Your Honor, I don't need to do
7 that today because you're not sentencing the man before you as
8 someone who just had this revelation.

9 In 2003, Mr. Martinez, right after the birth of his
10 young daughter, his baby daughter, and particularly and
11 completely dismayed and horrified by the level of violence
12 that was happening now in the drug trade amid these cartels
13 told his wife, I'm going to walk away. I need six or seven
14 months, I have to devise a plan or else I'm dead, but I will
15 walk away, I'm done. In six, seven, eight months later he did
16 that. Parenthetically, it should be noted in his career in
17 the cartel he never partook, sanctioned or was involved in any
18 way with violence.

19 So from 2003 he leads a crime-free life. Still used
20 drugs, had a serious cocaine habit in 2003, however, when he
21 walks away, he tries to quit, he quits, manages to stay clean
22 until about 2005.

23 By 2008, he walks away completely from drugs and has
24 been completely clean to this day. He found new meaning in
25 his life, partly because of faith. He became a lay minister

1 in the Protestant faith and started doing many things in terms
2 of charities and for the poor, but also went into legitimate
3 businesses starting shortly after 2003 which continued until
4 the day of his arrest. He has very successful and lucrative
5 businesses and I'm not naive to say at least the beginning
6 ones were not funded by illegal means, but there were many.
7 Car sales, he was part owner of one of the soccer teams down
8 there, clothing sales, an entrepreneur, this is a very bright
9 man. I'm sure the Court could tell just from his testimony,
10 he could have done anything.

11 And since 2003, he did many things, kept making
12 money, providing for his family, now also providing for his
13 community including poor people and all legitimately. Since
14 2008, no drugs. His biggest sin was a, quote/unquote,
15 addiction to cockfighting every ones in a while, which I don't
16 believe is a federal crime.

17 THE COURT: Actually I think it is, but --

18 MR. QUIJANO: Okay, probably it is, but what isn't,
19 right.

20 I would submit, Your Honor, that he has provided
21 with what can only fairly be described as truly extraordinary
22 and historic substantial assistance. Instrumental in the
23 conviction of the one the world's most notorious criminals.
24 Crippling two major cartels and for 17 years he has not been a
25 threat, he's not been a criminal, he's not been a drug user,

1 he's been a productive member of society. I urge this Court
2 to let him return to his family and continue to be a
3 productive, compassionate member of society.

4 I see no value, Your Honor, to continue any further
5 imprisonment in light of all these 3553(a) factors. And
6 again, perhaps even more than what I think is incredible
7 cooperation, is the last 17 years of his life that really
8 should speak to this Court more than anything else.

9 Thank you, Your Honor.

10 THE COURT: Thank you, Mr. Quijano.

11 Mr. Martinez, if you have anything you'd like to say
12 I'm happy to hear from you.

13 (Defendant spoke in foreign language.)

14 THE COURT: Thank you, Mr. Martinez.

15 Can I hear the translation please.

16 THE INTERPRETER: Yes.

17 THE COURT: I think I caught about 10 or 15 percent.

18 THE DEFENDANT: Of course, Your Honor.

19 Your Honor, these words that I will say to you come
20 from my heart. First, I ask my family for forgiveness for the
21 harm I caused them, for the errors that I made which led me to
22 be arrested. I also ask this country's society for
23 forgiveness, the United States of America for the harm that I
24 have caused them with all the drugs that I distributed in this
25 country. Believe you me, Your Honor, I am remorseful. On

1 that same token I ask you for your forgiveness, Your Honor,
2 and I ask for forgiveness to all of the United States
3 Attorneys, the agents, all of the people who were working on
4 my case.

5 Your Honor, believe me my remorse is sincere so much
6 so that many years ago I had already changed my life. I
7 stopped trafficking drugs, I got off that bad path and since
8 2007 or 2008 I stopped using drugs and alcohol and I started
9 working with a group called "Amore y Servicio," Love and
10 Service. They are spiritual retreats. They work with AA and
11 NA literature and the people who run that group have many
12 years of experience treating lots of other people who have
13 drug addiction problems, alcoholism, neurosis, emotional
14 disorders, they treat them with their testimonies and with
15 their testimonies they have helped to save lives. That's
16 where I started since 2009 more or less until my arrest in
17 2014. Before that I knew and had started repairing the harm
18 I'd done to society with all the drugs I had distributed and I
19 would like to, in the future, keep working on that path,
20 speaking to people who have that same illness alcoholism, drug
21 addiction and, again, I want to ask for forgiveness to all of
22 the American society especially all of the people negatively
23 affected by the drugs that I brought to this country, the
24 United States of America.

25 Lastly, I want to ask you, Your Honor, that today

1 you allow me to go home with my family. Thank you very much
2 for listening to me.

3 THE COURT: Okay. Thank you.

4 I'll hear from the government.

5 MR. ROBOTTI: Judge, I don't think the government
6 has much to add beyond the 5K letter here and what defense
7 counsel and the defendant have said except to highlight just a
8 few points briefly.

9 So I agree with the Court that the conduct is
10 severe. This defendant imported 30 to 50 tons of cocaine into
11 the United States including 15 to 20 tons of cocaine right
12 here to New York City. So he was a member of two of the most
13 violent criminal organizations in the world that committed
14 large-scale crimes. But I would also point out that his
15 conduct since he has been apprehended and his cooperation has
16 been exemplary. I do think that this is a difficult case for
17 the Court to balance on the one hand the severity of the
18 criminal conduct and on the other hand the significance of the
19 cooperation. But in terms of cooperating witnesses that
20 appear before this Court, I would say that Mr. Martinez ranks
21 among the top echelon in terms of significance of cooperation
22 to the government, so I do think that the Court should weigh
23 that heavily, especially when considering in this case
24 Mr. Martinez acted and on behalf of -- in cooperating with the
25 government at tremendous personal risk to himself and to his

1 family members. And I think as this Court knows through the
2 trial of Mr. Guzman Loera, that risk is real. That is a
3 significant risk to his safety and to his family and despite
4 that risk, he willfully cooperated with the government, he has
5 done everything that the government has asked him to do during
6 the course of his cooperation.

7 To pick up on a couple of points that both the
8 defense counsel and the defendant made here about the man that
9 is appearing before the Court today, I do think the government
10 would note throughout this process it took note of
11 Mr. Martinez's diligence and hard work and focus when during
12 the meetings with the government how committed he was to this
13 process. You know, there are some cooperating witnesses who
14 show up to these meetings and just aren't focused and the
15 government has to work with them to help make sure that they
16 get focused throughout this process and are really trying
17 diligently to cooperate. Mr. Martinez was not that type of
18 cooperator. He walked in every day prepared and was ready to
19 work. He didn't want to take breaks, he didn't want to stop,
20 he was focused to make sure that he was providing as much
21 assistance as he could the government.

22 In terms of whether he's turned his life around, you
23 know, you never know what's going to happen when somebody gets
24 out of jail, but Mr. Martinez did say to the government
25 repeatedly throughout this process that he wanted to leave his

1 life of crime behind, he had left his life of crime behind and
2 that when he gets out he wants to be a contributing member to
3 society and that was something that he emphasized from the
4 very first day that we sat down with him all the way up until
5 the last meeting that we had with him just a few minutes ago.
6 So I do think that based on everything he says he is committed
7 to moving forward and being a contributing member of society.

8 So I think the takeaway here, Judge, from the
9 government's perspective is yes, these are among the worse
10 crimes that we see in this courthouse in terms of drug
11 trafficking, but his cooperation is equally as important from
12 the government's perspective in terms of what he's offered
13 here --

14 THE COURT: Equally.

15 MR. ROBOTTI: I think equally, Your Honor --

16 THE COURT: Think about the implications of what you
17 just said and tell me that you meant it, okay. What you're
18 really saying is that as bad as the conduct was, it is
19 entirely offset by the high value cooperation. That's what
20 equally means. Is that what you mean?

21 MR. ROBOTTI: Your Honor, what I would say is that
22 his cooperation was exemplary and his cooperation should weigh
23 heavily in the Court's consideration here against his criminal
24 conduct.

25 THE COURT: Okay, but that's obvious, right?

1 MR. ROBOTTI: Yes, Judge.

2 THE COURT: Okay. Let me ask probation, I believe
3 he was arrested in Mexico in 2014 and extradited in 2016. Is
4 he going to get credit from the BOP for the time spent being
5 held in Mexico?

6 THE PROBATION OFFICER: Thank you, Your Honor.
7 Typically the Probation Department is obligated to defer to
8 the Bureau of Prisons for determining the time computation and
9 the credit a defendant will receive for time served.

10 There are a few factors that come into play here.
11 The first one is that he was arrested in Mexico. The first
12 question the BOP will have was whether or not the arrest in
13 Mexico stemmed from the instant offense or if he was charged,
14 for example, with a drug offense in that country. That's an
15 assessment the Probation Department cannot make at this time
16 as I do not know how the case arose in the foreign country and
17 whether or not the initial arrest in that foreign country was
18 connected to the instant case.

19 THE COURT: Let me just interrupt you there for a
20 minute. I think the lawyers know, right, what he was arrested
21 for in Mexico?

22 MR. ROBOTTI: My understanding, Your Honor, is he
23 was arrested at the request of the United States on the
24 government's provisional arrest warrant and that the
25 extradition proceedings took about a year and a half until he

1 was actually extradited to the United States.

2 THE COURT: So he was arrested on the request that
3 means in connection with the charged crimes here.

4 MR. ROBOTTI: That's correct, Your Honor.

5 THE COURT: So let me ask probation to assume that's
6 the case, he was arrested at the request of the United States
7 for the charged conduct in the United States.

8 THE PROBATION OFFICER: The BOP has -- has a way of
9 determining what the effective date that their time in custody
10 begins. So the bottom line is that he may, keyword being may,
11 end up receiving credit for the time he went into custody in
12 that foreign country.

13 THE COURT: Why wouldn't he? Do you have an answer?

14 THE PROBATION OFFICER: No, honestly, the BOP would
15 need to be contacted to make that determination as to when the
16 clock would start ticking, but there is a "may" here, there's
17 still a may. If it -- if it does -- if the extradition is
18 tied to the instant charges, there's still a caveat of there
19 being may. There may be all of the time counted that was
20 spent during his incarceration in the foreign country, or
21 there may be a portion, but typically we are obligated to
22 defer to the BOP because they are -- they are the ones who are
23 assessing and determining the effective date of imprisonment.
24 THE COURT: I'm not questioning your need to defer,
25 I understand it's the BOP's determination not probation's

1 determination, I'm simply asking based on your experience with
2 the BOP is it likely that, in fact, they will give him credit
3 for an arrest that occurred at the behest of the United States
4 based on the charges that had been issued in the United
5 States.

6 THE PROBATION OFFICER: That I cannot answer, Your
7 Honor.

8 THE COURT: Okay. Thank you. Do you have a view,
9 Mr. Quijano.

10 MR. QUIJANO: Yes, Your Honor. In Title 18, the
11 section escapes me, I think it's 35 or 38 something. There is
12 a section that deals with the computation of time and my
13 reading of that section is that BOP will start calculating as
14 of the date that a BOP facility receives the inmate. It comes
15 up a lot in 5G1.3 types of calculations when there is relevant
16 conduct involved, the person has been serving time perhaps in
17 a state before he's indicted and brought to federal court.
18 And as the Court knows, under those circumstances, since BOP
19 will not give credit for that relevant conduct time in state
20 prison, the Court is asked to, in its judgment, subtract the
21 amount of time that they've done from whatever sentence is
22 actually imposed and BOP will calculate from that point in
23 time.

24 THE COURT: But how are we possibly dealing with
25 that here when we're not talking about relevant conduct, we're

1 talking about an arrest that occurred for the charged conduct
2 at the request of the United States.

3 MR. QUIJANO: And what I'm suggesting, Your Honor,
4 is if the Court just imposes the sentence, BOP will calculate
5 only from the point in time that they had him in a BOP
6 facility. They will not consider or calculate time that he
7 spent in detention for these charges in Mexico.

8 THE COURT: Even if I'm telling them that I'm
9 assuming they will count that time, you're saying they won't
10 observe my recommendations.

11 MR. QUIJANO: I've had it before in 5G situations
12 and the problem is they won't. The short answer is no, they
13 won't. The only way around that is 5G1.3 contemplation which
14 is where the Court announces the sentence and then subtracts
15 the amount of time. Of course, all this could be settled with
16 just a time served sentence I might add.

17 THE COURT: Yes, I understand that. Okay.

18 THE PROBATION OFFICER: Your Honor, if I may add to
19 my comments, I've been checking with my colleagues in the
20 office and it seems as if the BOP, although they cannot
21 guarantee the amount of time he will receive credit for that
22 was spent in a foreign country, he should get some credit. So
23 it's not a definitive answer but it is likely that he should
24 get some credit. Since the first question is basically
25 answered that the arrest is linked to the instant case, there

1 should be some credit received.

2 THE COURT: But again, I'm not understanding why
3 there would be anything less than complete credit except
4 Mr. Quijano says it's just not done and it is up to me to
5 reduce the sentence not the BOP because they rely on me
6 essentially to give whatever credit I think is due. That's
7 what he's saying.

8 MR. QUIJANO: And they rely on the statute though,
9 at least that's the explanation I've gotten from them.

10 THE COURT: Yes.

11 MR. QUIJANO: They'll rely on the statute.

12 THE COURT: Does the government have any information
13 on this issue?

14 MR. ROBOTTI: No, Your Honor. Unfortunately, we
15 typically defer to the BOP in the calculation here and that,
16 you know, thinking it can be a rather complicated process, so
17 I don't want to speak for the BOP.

18 THE COURT: Well, Mr. Quijano is telling me the only
19 definite answer to the question I've asked, it's an important
20 question, I'm a little bit surprised that neither the
21 government nor probation has nailed this down because of the
22 importance of the question, but I'm going to go with
23 Mr. Quijano's explanation because it's the most definite and
24 clear disposition that I have on that issue. So where does
25 that leave me?

1 All right, I've considered all of the factors under
2 3553(a). The guidelines here, it seems to me, are not all
3 that important because, as I suggested to Mr. Quijano, if
4 there were not the mitigating factors that he has identified,
5 we would definitely be talking about a life sentence if there
6 were no other countervailing factors and even if there were no
7 guidelines, that's what we'd be talking about. There are very
8 important mitigating factors here. I agree with everything
9 Mr. Quijano and the government have said with respect to the
10 application of 5K1 in this situation. I have never had a
11 defendant who has put himself at greater risk than this
12 defendant has. I may sometime in the future, but I haven't
13 had it yet. It was -- I mean I want to say it was
14 extraordinarily brave, I think it was. I also think there was
15 some element of necessity to it because the defendant knew he
16 had to get out of this business, he just had to. They weren't
17 happy with him and not being happy with somebody leads to one
18 exit strategy when you're in this business. Nevertheless,
19 what he did was not just admit his guilt, he came forward and
20 took on a role that put him at the highest possible risk he
21 could be at.

22 By the same token, the value of his cooperation, I
23 just can't imagine how it could have been greater, it was
24 truly extraordinary in every sense of the word and it was of
25 the highest value to the government. You know, there's two

1 aspects to 5K1, how hard does the defendant try, and how much
2 does it really help when he gives his information. Here he
3 gets the highest possible evaluation on both of those factors.
4 He gave it everything he had and he had extraordinarily
5 valuable information that's in addition to the risk that I've
6 said I understand he took. Of course, I have to recognize at
7 the same time that one of the reasons that the value of his
8 cooperation was so high is because his position in the
9 organization was so high. I accept that he was not a
10 participant in the extraordinary violence perpetuated by this
11 criminal organization, two criminal organizations, but he was
12 what I call a senior executive. I don't think he can be
13 classified as a middle manager in the scope of this operation
14 and I think Mr. Martinez said it right, more than Mr. Quijano,
15 when he talked about apologizing to the victims of the crime,
16 not the people who were killed by other members of the
17 cartels, but the people who consumed this massive amount of
18 drugs to their detriment. You know, I have no evidence in
19 front of me to suggest that anyone died sort as a result of
20 the drugs that he arranged the shipping for, on the other
21 hand, common sense suggests with this quantity the ill effects
22 on the recipients of the drugs were very high.

23 I also accept what Mr. Martinez and Mr. Quijano have
24 told me about the defendant being a changed person. I think
25 Mr. Quijano's right, this isn't the situation where I kind of

1 have to take it on faith. It's been a long time since he's
2 been out of the business doing other socially beneficial
3 things, so I'm not -- as the government suggested you never
4 know a hundred percent, but I'm not terribly concerned about
5 recidivism here or the defendant sliding back into his old
6 ways. He has proven to me already that he is the person that
7 he represents himself as. So I accept that and that of course
8 is very important in terms of specific deterrents.

9 So that leaves me with the conundrum that I started
10 out with here, which is, considering the awful nature of his
11 crime, is there any level of reconstitution as a person and
12 cooperation to show that reconstitution that can, as
13 Mr. Robotti said, equal the crime. If it's equal or even if
14 it's not equal, if it's equal when you add in the time he's
15 been in custody already, then it's obviously a time-served
16 sentence. If there's a disparity, then I have to impose some
17 additional time to equal that disparity.

18 THE PROBATION OFFICER: Your Honor, I'm sorry to
19 interrupt.

20 THE COURT: That's okay, go ahead.

21 THE PROBATION OFFICER: I just received word from
22 one of our supervisors who is formerly employed at the Bureau
23 of Prisons and he's the expert we all go to and he relayed
24 that if the defendant served time in a Mexican prison on a
25 U.S. warrant pending extradition for prosecution of the

1 instant offense, then he will get credit for that time. If
2 any of the time spent in a Mexican prison was prior to the
3 U.S. warrant, then he will not get credit for it. So this is
4 where we're at in my research on the issue.

5 THE COURT: Okay. Mr. Robotti, he was arrested in
6 Mexico pursuant to an extradition warrant, right?

7 MR. ROBOTTI: Yes, Your Honor. My understanding,
8 and defense counsel or defendant can correct me if they know
9 otherwise, my understanding is he was arrested based on a
10 request from the United States pursuant to a provisional
11 arrest warrant.

12 THE COURT: There is a request and there is a
13 warrant. I can see the BOP being very technical about this.
14 Was there a physical warrant delivered to the Mexican
15 government or do the papers take some other form by way of the
16 extradition request?

17 MR. ROBOTTI: Your Honor, the government requests
18 the Mexican government to issue a provisional arrest warrant
19 for the defendant based on the United States charges. The
20 only complication I could see here is whether the defendant
21 had any outstanding charges in Mexico at the time for which he
22 was also serving prison time. I don't actually know the
23 answer to that. I don't know if Mr. Quijano --

24 MR. QUIJANO: No, Your Honor, he didn't. However,
25 from personal experience in dealing with this issue with the

1 BOP, I'm constantly referred back to that statute and when
2 they start calculating the release date they are going to
3 calculate from the moment BOP had him. I understand what
4 probation is saying, but --

5 THE COURT: Have any of your prior cases, because
6 none of mine have, involved a situation where the arrest is
7 wholly at the request of the United States. I usually see,
8 you know, like you're describing there's an arrest on local
9 law violations and then there is a request for extradition,
10 and then we'd have that problem.

11 MR. QUIJANO: I believe I've had it with Columbian
12 cases where we've dealt with it, at least at this point, we've
13 dealt with it in terms of a downward departure. Again, under
14 the belief that BOP will not calculate the time spent in the
15 Colombian prison, so we addressed it as a downward departure.

16 THE COURT: Okay.

17 MR. QUIJANO: I usually haven't been asking for time
18 served in those situations parenthetically.

19 THE COURT: Right. Look, I understand the good
20 reasons why the government cannot advocate for a particular
21 sentence, that's fine. I'm not asking that. But for future
22 reference, okay, I think probation and the government have the
23 obligation to nail this issue down. Someone at the BOP can
24 say, I'm not binding myself, but he's going to get credit or
25 he's not going to get credit. There is nothing in my

1 documentation, and I have extensive documentation, to suggest
2 that he was arrested for any local law violations but I don't
3 know how significant that is. Probation now tells me that
4 she's communicating by text with her office that oh, well, if
5 there really isn't any local law violation, then he should get
6 credit. But, you know, I'm dealing with a man's freedom here,
7 I can't take chances on it. I've got to defer it to
8 Mr. Quijano's experience because the government and probation
9 haven't given me anything different, you know, so I'm just
10 saying next time I would expect this to be nailed down. I'm
11 not going to keep the sword of Damocles hanging over this
12 defendant by adjourning now so that we can find out. I'm
13 simply going to give him the benefit of the doubt.

14 If I give him the benefit of the doubt that means he
15 gets credit for roughly six years of custody and the question
16 becomes whether six years of custody is sufficient to offset
17 the damage that was caused by the crime itself. And that
18 takes into account, has to take into account cooperation, the
19 personal transformation that he's undergone, the beneficial
20 things that he has attempted to do. And I think there are
21 some crimes that are just so bad that even if everything
22 humanly possible is done to make amends, and I accept that
23 this defendant has done everything humanly possible, six years
24 is not to me sufficient. Then I get to the question of well,
25 what is. Obviously, if I were going to say well, seven years

1 I would say that's a ridiculous distinction, the six years is
2 enough. So the real question is, is there an amount in
3 addition to the six years he's served that will serve to
4 offset the harm that has been done and at the same time make
5 it clear that the best thing for anybody to do in his position
6 is to do what he did, become a new person, cooperate fully.

7 The lowest I can go, recognizing that I have to
8 impose the least amount of time that I can to accomplish all
9 the purposes of sentencing, is nine years and that would be 98
10 months, if I'm counting correctly. Ninety-two -- what is that
11 12 times nine, 90 and 18, 108. I'm going to deduct from that,
12 because Mr. Quijano has the best indication to me of what BOP
13 is likely to do, the two years that he served, so that reduces
14 us down to 84 months.

15 Am I counting right, someone checking me?

16 MR. ROBOTTI: Yes, Your Honor.

17 THE PROBATION OFFICER: Yes.

18 THE COURT: I am therefore going to impose a
19 sentence, I will say a very difficult sentence, on Count Three
20 of 84 months. I will follow that with two years of supervised
21 release. The supervised release will have the following
22 special conditions:

23 Number one, no association with any members of a
24 criminal enterprise or anyone known to have a criminal record.
25 No visiting of any place that he knows or should know

1 reasonably is a place frequented by people with criminal
2 records.

3 If he is removed from the United States after he
4 serves the sentence, the special condition will be that he not
5 reenter the country illegally. He's got to cooperate with all
6 directions from immigration authorities.

7 I'm not going to impose a fine because I don't think
8 he can afford it. I will impose the mandatory 100-dollar
9 special assessment.

10 The way I've done this -- if you're wrong,
11 Mr. Quijano, it may well come out to a time served sentence if
12 they give him the extra credit that I've already given him,
13 I'm not terribly troubled by that. I think that's the
14 situation that the government and probation have left me in.
15 I just can't take a chance that I'm sentencing him to two
16 years more than I think is required.

17 All right, are there open counts?

18 MR. ROBOTTI: Yes, Your Honor, Counts One and Two
19 are open, the government moves to dismiss.

20 THE COURT: That motion is granted.

21 Anything further before I advise him of his
22 appellate rights?

23 MR. QUIJANO: I'm sorry, Your Honor.

24 THE COURT: Yes.

25 MR. QUIJANO: Just to be clear, the final sentence

1 is 84 months.

2 THE COURT: Eighty-four months.

3 MR. ROBOTTI: Your Honor, the government just asks
4 that the Court orally pronounce the forfeiture order on the
5 record and attach that to the judgment.

6 THE COURT: Right. I have previously entered a
7 forfeiture order on this, or if I haven't I will sign it now,
8 that will be annexed to the judgment. Compliance with that
9 forfeiture order is part of the special conditions of
10 supervised release and part of the judgment of the Court. All
11 right.

12 Mr. Martinez, you have the right to appeal the
13 sentence that I've just imposed, I'm not saying you want to
14 but if you do want to you certainly have that right. In order
15 to appeal the sentence the most important thing you need to do
16 is get filed what's known as a Notice of Appeal. That's a
17 one-page piece of paper that says you are appealing.
18 Mr. Quijano will file that for you. If he doesn't for some
19 reason, you can certify to the clerk that you can't afford a
20 lawyer and the Clerk of the Court will file it for you or you
21 can get a one-page piece of paper, the form of it and file it
22 yourself, but however you delegate it, you have to make sure
23 it's your responsibility to see to it that it gets filed
24 within 14 days or you will not have any right to appeal the
25 sentence.

1 Is there anything further?

2 MR. ROBOTTI: Nothing from the government, Judge.

3 MR. QUIJANO: No, Your Honor.

4 THE COURT: All right. Thank you all very much. We
5 are adjourned.

6 (Matter concluded.)

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8 * * * * *

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10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

12 s/ Georgette K. Betts

March 17, 2020

13 GEORGETTE K. BETTS

DATE

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